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SUMMARY AND INTRODUCTION

[1](#)1. (SBU) This is the final report in a three-part series on labor-management relations in the ROK. In previous cables we described the major players (Ref A) and current issues (Ref B). We now focus on whether Korean labor laws meet the core labor standards contained in the Trade Promotion Authority Act of 2002 (TPA). As set forth below, the ROK Constitution and laws that govern labor and employment provide substantial protections that apparently meet or nearly meet all five standards. END SUMMARY.

CORE LABOR STANDARDS

[1](#)2. (SBU) The TPA sets forth that one of the USG overall trade negotiating objectives must be to promote respect for worker rights and the rights of children consistent with core labor standards. The Act defines those standards to be: (A) the right of association; (B) the right to organize and bargain collectively; (C) a prohibition on the use of any form of forced or compulsory labor; (D) a minimum age for the employment of children; and (E) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

RIGHT OF ASSOCIATION

[1](#)3. (SBU) Workers in the ROK have a Constitutional right of association (Article 21) and the right to form or join trade unions (Article 33). This right is further spelled out in the 1997 Trade Union and Labor Relations Adjustment Act (TULRAA), which states that a labor union can be formed by an organization or associated organizations of workers for the purpose of maintaining and improving their working conditions and enhancing their economic and social status. The

organization will not be regarded as a labor union in cases where an employer or other persons who act in the interest of the employer are allowed to join; in cases where most of its expenditures are supported by the employer; in cases where activities are aimed only at mutual support or improvement; in cases where those who are not workers are allowed to join; and in cases where the groups' aims are mainly directed at political movements.

¶4. (SBU) The OECD in 1996 expressed concern that public servants and teachers could not organize unions in Korea. The situation has changed significantly since then. In 1999, about two-thirds of civil servants obtained the right to join workplace associations to consult with management on working conditions and grievance handling. Teachers obtained the right to join trade unions (but not to strike) under a separate 1999 law. In a law that went into effect on January 28, 2006, the National Assembly recognized lower grade (below grade 5) public servants' right to organize, bargain collectively, and negotiate collective agreements. The law applies to approximately 75 percent of government employees.

¶5. (SBU) However, the Korean Government Employees Union (KGEU), with 140,000 members, and the Confederation of Government Employees, with 70,000 members, have refused to register under the law because it does not apply to all public servants and does not allow the right to strike or take other collective action. The International Labor Organization (ILO) maintains that public servants should, without distinction, have the right to form and join organizations of their own choosing and that Korea's total exclusion of public servants of grade 5 or higher is a violation of the right to organize. Diverging from the ILO, the OECD said that Korea has followed through on its commitment to allow trade unions endowed with bargaining rights.

¶6. (SBU) There is also an issue regarding restrictions on the right to strike among sectors that deliver "essential services," such as railways, gas, electricity and water, oil refineries and supply, hospitals and other medical services, and telecommunications. In these fields, industrial conflict is subject to compulsory arbitration, which the ROKG has said is necessary to protect national security and guard against economic loss. The ILO, however, has argued that the restrictions should only apply under conditions of "imminent threat to the life, personal safety or health of the whole or part of the population." The labor reform roadmap (Ref B) suggests that instead of requiring compulsory arbitration for industrial actions involving essential public services, the law should be changed to require minimum services in areas where complete work stoppages would threaten the safety, health and daily lives of the public. Collective action in other circumstances would be permitted.

¶7. (SBU) In addition, international organizations have also criticized Korea for the detention of trade unionists. Overall, the number of detained trade unionists has declined. In 2004, the number of arrested trade unionists declined to 71 from 165 in 2003. Although government figures for 2005 are not yet available, it appears from press reports that between 20 and 30 were arrested last year. The Minister of Labor assured us in June 2005 that, in recent years, all arrests were the results of workers' acts of violence, "behavior that is not tolerated in any other OECD member country" (Ref C).

¶8. (SBU) The OECD and ILO have also expressed freedom-of-association concerns over employers' payment of full-time trade union officials. As discussed Ref B, employers currently pay full-time union workers, even though they only work in the union office. This practice will end January 2007. The government's labor reform roadmap would allow employers to pay their union officials within certain limits.

¶9. (SBU) Further, the OECD and ILO have criticized Korean law for disqualifying an organization for union status if

persons who are not workers are allowed to join. Rather than exclude dismissed and unemployed workers as a matter of law, the OECD and ILO maintain that unions themselves should be able to determine the qualifications for union membership. The roadmap would change existing law so that membership in enterprise-level unions would be limited to those who are employed by the enterprise. Qualifications for membership in non-enterprise based unions, meanwhile, would be decided by the unions themselves.

RIGHT TO ORGANIZE AND BARGAIN COLLECTIVELY

¶10. (SBU) Workers have constitutional and statutory rights to organize and bargain collectively. According to Article 33 of the Constitution, "to enhance working conditions, workers shall have the right to independent association, collective bargaining, and collective action." The TULRAA elaborates that it is an unfair labor practice to dismiss or treat a worker unfavorably because he has joined, attempts to join, or tries to organize a trade union. The trade union representative has the authority to bargain and make a collective agreement with the employer's association for the trade union and its members. The parties have a statutory obligation to bargain in good faith. Unjustified refusal or delay of the execution of a collective agreement or of collective bargaining is an unfair labor practice, under the TULRAA.

¶11. (SBU) International organizations have criticized Korea for not allowing multiple trade unions at the enterprise level. The government initially prohibited the practice out of concern for inter-union rivalry and the loss of time and resources for the employer in bargaining with several unions at the same company. The law will change in 2007 to allow multiple unions (Ref B).

¶12. (SBU) Additionally, the ILO has also criticized Korea for requiring persons who assist trade unions and employers in collective bargaining or in cases of industrial conflict to register in advance with the government. The roadmap proposes that the third-party assistance reporting and penalty provisions should also be abolished.

PROHIBITION OF FORCED OR COMPULSORY LABOR

¶13. (SBU) Article 12 of the Constitution prohibits forced labor. The TULRAA states that an employer shall not force an employee to work against his own free will through the use of violence, intimidation, confinement, or any other means by which mental or physical freedom of workers might be unduly restricted.

¶14. (SBU) In practice, forced or compulsory labor is mainly a problem in the context of the ROK's sizable sex trade. In 2003, the government estimated that around 330,000 women were involved in the industry. We understand from government and NGO contacts that the domestic sex trade is run largely on a debt bondage system. That is, women entering the sex trade are encouraged to borrow money in order to purchase clothing and accessories, or even the opportunity to work in a particular location. The debt rapidly grows so that the women, even if they want to stop work, are compelled by the debt (and threats to use legal and extralegal means to collect) to continue working. The government in 2004 passed sweeping legislation aimed at eradicating this industry (Ref D). The laws strengthened the penalties associated with prostitution and trafficking, and provided a support structure, including legal, medical and social assistance, for women trying to escape. The laws appear to have been somewhat successful in raising awareness of prostitution as a crime and in helping a number of women eradicate their debts and retrain into legitimate vocations. However, prostitution and trafficking, and the coerced labor behind much of it, continues to be a concern (Ref E).

CHILD LABOR PRACTICES AND MINIMUM AGE FOR EMPLOYMENT

¶15. (SBU) The TULRAA provides that minors under the age of 15 shall not be employed in any work. However, such minors may work with an MOL employment permit certificate, but only if compulsory education (which is mandatory through middle school) is not impeded. For each minor worker under the age of 18, an employer must keep at each workplace a copy of the minor's family register verifying his or her age and a written consent of his or her parent or guardian. Neither a person with parental authority nor a guardian may enter into a labor contract on behalf of a minor. A person with parental authority, a guardian, or the Minister of labor may terminate a labor contract, if the contract is deemed disadvantageous to the minor. Work hours of a person between 15 and 18 may not exceed seven hours per day and 42 hours per week, except that work hours may be extended for one more hour per day and six more hours per week by agreement of the parties. (This provision is gradually being revised to lower the total permissible hours per week to 40. Currently, businesses with over 300 workers must abide by the new standards. The rest will phase in through 2011.) Minors may not work in a pit, unless authorized by Presidential decree. The ROK has ratified ILO Convention No. 138 on Minimum Wage and Convention No. 182 on the Worst Forms of Child Labor. Child labor is not considered to be a problem in the ROK.

ACCEPTABLE CONDITIONS OF WORK: WAGES, HOURS, AND SAFETY

¶16. (SBU) The Minimum Wage Act establishes a Minimum Wage Council that determines the minimum wage each year in accordance with the cost of living, wages of similar workers, labor productivity, and distribution of income. In 2005, the Council set the minimum wage at 3,100 won (3.18 USD) per hour and 24,800 won (25.45 USD) per day. This was an increase of 9.2 percent from the previous year. Workers earning the minimum wage may have difficulty providing a decent standard of living; however, most blue-collar workers earned significantly more than the minimum wage.

¶17. (SBU) The ROK is currently transitioning from a 44 hour to a 40 hour work week. Businesses with over 1,000 employees switched July 1, 2004, and businesses with between 300 and 1000 employees switched on July 1, 2005. The implementation dates for the remaining employers are as follows: 100 and 300 employees (July 1, 2006); 50 to 100 employees (July 1, 2007); 20 to 50 employees (July 1, 2008); the remainder will switch prior to 2011 on dates yet to be determined. By law, employees are entitled to holidays, monthly paid leave, annual paid leave, and for women, menstruation leave, maternity leave, and nursing leave. A worker who has an 80 percent or higher attendance rate in a given year is entitled to 15 days of paid leave.

¶18. (SBU) The Industrial Safety and Health Act promotes the safety and health of workers by establishing standards on industrial safety and health. The Act charges the government with responsibility for establishing industrial safety and health policy and the business owners with the responsibility of observing standards for the prevention of industrial accidents. Companies that employ 100 or more workers must appoint a person to be in charge of safety and health management. The company must also establish an industrial safety and health committee comprised of an equal number of workers and employers. If there is an imminent danger of an industrial accident, or if a serious accident has occurred, the business owner shall take necessary measures for safety and health, including suspension of operations, until work can be resumed in accordance with safety requirements. Workers who sustain injuries due to occupational accidents may receive compensation in accordance with the Industrial Accident Compensation Insurance Act.

¶19. (SBU) Nevertheless, Korea's accident rate was rather high. According to the Korea Occupational Safety and Health Agency, there were 2,825 fatalities in 2004 related to industrial accidents. The government recently introduced a

plan to publicize and impose sanctions on work places that have a high rate of accidents. In July 2005, the Ministry of Labor said that construction companies with high accident rates would be restricted from bidding for government projects.

¶20. (SBU) Conditions of work appeared to be most problematic for foreign workers. There are over 400,000 foreign workers, mostly illegal, who come from China, Bangladesh, Mongolia, the Philippines, Thailand, Nepal, Vietnam, Indonesia, Sri Lanka, and Pakistan to work in the ROK. Most are employed to perform Korea's "3D" ("dirty, difficult, and dangerous") work. The issue of foreign worker safety drew national attention in January 2005 when eight Thai women were paralyzed from working with toxic solvents at an electronic parts factory. The Ministry of Labor subsequently conducted inspections in 5,000 workplaces and initiated several prosecutions for industrial safety violations. The Ministry is also developing legislation that would extend the provisions of the Industrial Safety and Health Act to illegal foreign workers so that they can get the same legal protection to which Korean workers are entitled.

¶21. (SBU) Working conditions for foreign workers are likely to improve as the government continues to implement its new permit system for foreign workers (Ref F, Ref G). Under the new systems, permit holders may only work in certain industries and have limited job mobility, but generally enjoy the same rights and privileges, including the right to organize, enjoyed by domestic workers. By August 2005, 14,800 workers had entered the country through the new system.

OECD SCRUTINY OF ROK LABOR REFORM

¶22. (SBU) Since the ROK joined the OECD in 1996, the OECD's Employment, Labor and Social Affairs Committee (ELSAC) has monitored Korea's progress in light of commitments made by the ROKG "to reform existing laws on industrial relations in line with internationally-accepted standards, including those concerning basic rights such as freedom of association and collective bargaining." According to the OECD's 2005 review, Korean authorities have taken a number of important steps to meet their commitments, most of which were taken between 1996 and 2000. As of 2002, the OECD had concerns about the following remaining issues: prohibition of multiple unions at the enterprise level; denial of civil servants' right to organize; prohibition in principle of employers' payment for full-time trade officials; the broad definition of "essential public services," where public servant actions were restricted; prohibition for unemployed or dismissed workers to become or remain trade union members; and the requirement for notification of third parties to industrial disputes. The OECD also reported that authorities were arresting trade unionists for activities that would be considered legitimate union activities in other OECD countries.

¶23. (SBU) In its 2005 review, the OECD noted the passage of the public servants' law and the development of the roadmap as "important developments." ELSAC commented that the roadmap, if fully implemented, "would imply that Korea reaches the desired international labor standards in most of the items surveyed through the OECD's monitoring." The OECD said that it had "no doubt of the political determination on the part of the (Korean) government and the main political parties to push through this reform agenda by the end of 2006."

COMMENT

¶24. (SBU) Organized labor has achieved tremendous progress in securing worker rights and benefits over the past 20 years. Through the mid-1980s, the Korean government brutally oppressed the labor movement. Now, as set forth above, the ROK meets or nearly meets all the core labor standards, as defined by the TPA. The OECD notes that passage of the

roadmap would likely bring the ROK substantially in line with international labor standards. Ironically, it is organized labor that is most critical of the roadmap (Ref B) and most likely to interfere with the near-term achievement of this milestone.

VERSHBOW